

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PEDRO CHAIREZ,

Plaintiff,

v.

PERRY PHELPS, et al.,

Defendants.

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**CIVIL ACTION
NO. 11-cv-644-MN**

PLAINTIFF’S RESPONSE TO SHOW CAUSE ORDER

In response to this Court’s Show Cause Order entered on September 21, 2018 (D.I. 88), Plaintiff Pedro Chairez (“Plaintiff”), by and through his undersigned counsel, Jody C. Barillare (“Counsel”), respectfully requests that this action not be dismissed for failure to prosecute and states as follows:

1. While it is not reflected in filings on the docket, Plaintiff and his appointed Counsel have been taking action to develop and prosecute this case.
2. Upon being assigned to this case as counsel for Mr. Chairez (D.I. 87.), Counsel began reviewing the pleadings, factual record, summary judgment papers, and documents produced in this case. Counsel also engaged in several discussions of factual and legal issues with Mr. Chairez in order to develop a strategy for this litigation and trial. Counsel’s law firm has two Delaware attorneys and paralegal assistance invested in helping with this case. Counsel for Defendants have also extended Counsel the professional courtesy of re-producing all of the documents that have been produced thus far in this case, as Mr. Chairez’s files were destroyed while he was incarcerated at the James. T. Vaughn Correctional Center. Counsel and Plaintiff are reviewing these documents.

3. After evaluating the case record, Counsel researched and drafted a motion to reopen discovery. But before burdening the Court with an unnecessary motion, and in compliance with his L.R. 7.1.1 obligations, Counsel reached out to counsel for Defendants to discuss scheduling and potential categories of discovery.

4. As a result, Counsel has been working with counsel for Defendants to negotiate a new joint proposed scheduling order which, if approved by the Court, will provide for a period of time for the parties to take some additional discovery as well as set a schedule for future events in this case. Due to scheduling conflicts and the caseload demands of both counsel, this process has taken longer than usual. Additionally, during the course of the parties' discussions, counsel for Defendants, Kenisha Ringgold, was transferred to a new position and would no longer be working on this case. Upon her transfer, Ms. Ringgold and Counsel agreed that it was best if we postponed discussing and agreeing to a new schedule and discovery until new defense counsel could be assigned and we could continue our dialogue to submit to the Court a joint scheduling order. To date, a new defense counsel has not been assigned. Late last week, after the Court issued its Show Cause Order, Counsel and Ms. Ringgold conferred, and we understand that new defense counsel should be assigned soon. Once that happens, the parties can finalize a joint schedule for the Court's consideration.

5. Finally, Counsel submits to the Court that Mr. Chairez is passionate about his claims, and he has been nothing short of proactive in his involvement with counsel and his participation in the prosecution of his claims. Mr. Chairez has been cooperative, responsive, and actively engaged in discussing the facts and strategy of the litigation. He has been in frequent communication with Counsel since Counsel was appointed, and, despite the delays in correspondence due to Plaintiff's status as an incarcerated individual, has exchanged many

letters with Counsel with respect to this case. **None** of the reason for or cause of any delay in this case thus far falls on Mr. Chairez. Therefore, Counsel respectfully asks that Mr. Chairez not be prejudiced for the delays of counsel and the circumstances surrounding negotiating a joint scheduling order.

CONCLUSION

WHEREFORE, for the reasons stated above, Plaintiff and Counsel respectfully request that the Court allow this action to proceed upon a schedule to be jointly submitted by the parties.

Dated: September 24, 2018

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